

**Town of Milford
Zoning Board of Adjustment Minutes
April 18, 2013
James Miller
Case #2013-06
Variance**

Present: Fletcher Seagroves, Chair
Zach Tripp
Laura Horning
Kevin Taylor

Katherine Bauer – Board of Selectmen’s representative

Absent: Bob Pichette

Secretary: Peg Ouellette

The applicant, James Miller, owner of Map 4, Lot 34, 291 North River Rd, in the Residence “R” district, is requesting a variance from Article V, Section 5/04.4, to allow for the construction of a single family home on a lot which does not have the required 200 feet of frontage on a Class V or better road.

Motion to Approve: May 2, 2013

Fletcher Seagroves, as Chairman, opened the meeting stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board and read the notice of hearing into the record. The list of abutters was read. No abutters were present.

J. Miller stated he wanted to build a single-family home on a lot that previously had one on it. The lot has a right of way over a lot in front of it with a paved driveway.

L. Horning asked as to the footprint of the home. Would it be in the exact location as the previous house?

J. Miller stated it would be a little bigger but in the same general area.

L. Horning asked the size of the lot.

J. Miller stated it was 3.07 acres.

F. Seagroves inquired about the application stating there was town sewer out there.

J. Miller said not to his knowledge. He has had a septic design done.

Z. Tripp asked if Mr. Miller was the original owner.

J. Miller said he bought the property a few months ago. It was owned by Bank of America who foreclosed on the previous owners after the house burned down.

F. Seagroves said he believed the house burned down in 2006.

K. Taylor said that is what Bill Parker's statement said.

F. Seagroves and Z. Tripp had the same question about the footprint as Laura, which had been answered. There were no other questions from Board members.

F. Seagroves opened the hearing for public comment. There was none. He closed the public comment portion and asked the applicant to go through the criteria for a variance on the application.

1. Granting the variance would not be contrary to the public interest because:

It does not violate or threaten the public health, safety, morals, general welfare or civil rights of the inhabitants of the Town of Milford.

2. If the variance were granted, the spirit of the ordinance would be observed because:

It provides for the general welfare by allowing a residential home to be constructed and occupied.

3. Granting the variance would do substantial justice because:

It promotes the general welfare of the Town by providing additional housing and tax dollars.

4. Granting the variance would not diminish the value of surrounding properties because:

It would no longer be a vacant lot but would be a home in an established neighborhood of like or better quality.

5. Denial of the variance would result in unnecessary hardship.

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The proposed use is no different than the prior use before the property was destroyed by fire.

ii) and; The proposed use is a reasonable one because:

There was a single-family home on the said parcel prior to home being destroyed by fire. The property use is no different than the prior use of said property.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

Without the variance the lot will remain vacant and cannot be used to construct a single-family home.

J. Miller stated that Section C is not applicable.

L. Horning stated, just for information, regarding applicant's response to #3 above that it would promote the general welfare by providing additional housing, that as a Board they were not allowed to consider whether something would generate revenue. They must abide by the ordinance, not the prospective revenue that could be generated.

F. Seagroves asked if the board had any additional comments or questions; they did not, so they proceeded to discuss the criteria for a variance.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp said yes. It will not unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance because it would not increase density or intensity of the Residence R district any more than in 2006. It would maintain the density, so public interest would be the same as in 2006.

K. Taylor said yes. House was there in 2006. It would not increase anything; it would just replace.

L. Horning said it would not be contrary to the public interest. It is going back to the original house.

F. Seagroves said yes. In reading the zoning handbook it is not a threat to health, safety or general welfare of the public. Actually, if the house was built in 2007 it would have been grandfathered.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor said yes.

L. Horning said yes. The spirit of the ordinance is to promote health, safety and general welfare of the community. This was already an existing home. She didn't believe there was any threat to health, safety or general welfare. It was not contrary to the spirit; it flows with the spirit.

Z. Tripp agreed with the other members that it would not violate the spirit. He read from the Residence R section of the ordinance which states its intent is to provide for low-density residential and agricultural land uses, and other compatible uses. He stated he believed this parcel of land without 200' of frontage satisfied all of those.

F. Seagroves agreed with the other members. It was an act of God that took the house. Even though there is a year minimum to rebuild, he did not see in this case they were violating the spirit of the ordinance.

3. Would granting the variance do substantial justice?

L. Horning said yes. She believed that this lot would be left vacant and seeing the devastation of the fire, not knowing whether there is an open foundation hole out there or other problematic things, if left unattended. The lot is in a precarious position. She didn't see how the lot could otherwise be utilized. Putting a house there would do substantial justice.

Z. Tripp agreed. Not granting would be a loss to the individual after he bought the land with a right of way to the house foundation. It would be an injustice, without any gain to the public.

F. Seagroves read from the Handbook that any loss to the individual not outweighed by gain to the general public is an injustice. He didn't see where the public would gain by denial.

K. Taylor said yes. Applicant is replacing something that has been there.

4. Could the variance be granted without diminishing the value of abutting property?

K. Taylor said they are replacing what was there.

Z. Tripp agreed. The property already has a right of way. It doesn't change the value and building back from the road would not be affecting abutting property.

L. Horning said she didn't think it would cause any diminishing of property values. It would enhance values. It is now a vacant lot with a possible foundation hole. Leaving it in that condition would cause more diminution to property values than replacing the house.

F. Seagroves agreed. There was a house there before. The applicant will be putting in a brand new house. He didn't see any reason a brand new house would affect value of the abutting properties.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z. Tripp said yes. Re #2, use is reasonable. Not granting would interfere with reasonable use of the lot. Re fair and substantial relationship, granting would not exclude the purpose of low density and intensity. The property is unique because it is a three-acre lot and set back from the road and maintains the character. It already has a right of way. Denying would be an unnecessary hardship.

L. Horning said she didn't see any fair and substantial relationship of the public purposes. It is a reasonable use and there is no fair and substantial relationship between the request for variance and the zoning ordinance. Looking at strict enforcement of the ordinance would place a hardship on the applicant because of the way the lot is constructed with a right of way going to a piece of property that has been abandoned since 2006. Holding him to strict conformance would cause a hardship in that he would be left with an empty lot. And, considering the foundation hole.

K. Taylor agreed it would create a hardship if they denied.

F. Seagroves agreed. There is no way to get 200' of frontage. It is a unique property. The use is a reasonable one.

K. Johnson asked if there were any additional comments; there were none so he called for a vote.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp – yes K. Taylor – yes L. Horning – yes F. Seagroves - yes

2. Could the variance be granted without violating the spirit of the ordinance?

L. Horning – yes Z. Tripp – yes K. Taylor – yes F. Seagroves – yes

3. Would granting the variance do substantial justice?

K. Taylor – yes L. Horning – yes Z. Tripp – yes F. Seagroves – yes

4. Could the variance be granted without diminishing the value of abutting property?

L. Horning – yes Z. Tripp – yes K. Taylor – yes F. Seagroves - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Taylor – yes L. Horning – yes Z. Tripp – yes F. Seagroves - yes

F. Seagroves asked if there was a motion to approve case #2013-06, a request for a variance.

Z. Tripp made the motion to approve Case #2013-06

L. Horning seconded the motion.

Final Vote

Z. Tripp - yes L. Horning – yes K. Taylor – yes F. Seagroves - yes

Case #2013-06 was approved by unanimous vote.

F. Seagroves reminded the applicant of the thirty (30) day appeal period.

After approval of minutes of previous meetings, there being no further business, the meeting was adjourned.